

Message

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Subject: OCSPP News for May 5, 2021

OCSPP Daily News Round-Up

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Ohio City Seeks \$310 Million in PFAS Claim Against U.S. Army

Sylvia Carignan, Bloomberg Law

https://news.bloomberglaw.com/environment-and-energy/ohio-city-seeks-310-million-in-pfas-claim-against-u-s-army?usertype=External&bwid=00000179-37e5-dc70-a1f9-77fd41d60001&qid=7102704&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_n1%3A45&source=newsletter&item=read-button@ion=digest&access-ticket=eyJjdHh0IjoikVWRSIsImlkIjoiaMDAwMDAxNzktMzdlnS1kYzcvLWExZjktNzdmZDQxZDYwMDAxIiwic2lnIjoiaRU84cUdwRW5FRHEzV3dKYktwd3lHVUpKQkYwPSIsInRpbWUiOiIxNjIwMjEzIiwiaWwiOiwiXVpZCI6Ik56eHl2cXdFTTM0TlJoMTdObTF2cXc9PU5KTTlHLS1wYjd3NjFsWGZBbkxsMHE9PSIsInYiOiIxLn0%3D

The city of Dayton, Ohio, wants the Air Force to pay \$310 million to remove PFAS from municipal drinking water, which originated from a nearby base, the city alleged in federal district court.

The Ohio Environmental Protection Agency advised Dayton to shut down its production wells closest to Wright-Patterson Air Force Base to minimize the imminent threat to the municipal water supply, the city said. Per- and polyfluoroalkyl substances, or PFAS, continue to migrate into the city's wellfields, according to the complaint filed Monday in the U.S. District Court for the Southern District of Ohio.

The city joins New Hampshire, New Mexico, and others in the list of entities seeking funds from the Air Force to address PFAS contamination in drinking water.

The Air Force denied the city's administrative Federal Tort Claims Act damage claim and Ohio Gov. Mike DeWine's (R) request for a cooperative agreement under the National Defense Authorization Act.

The base started using firefighting foam that contains PFAS in 1970 to put out aviation fuel and oil fires and in training exercises. Those working on the base knew as early as 1988 that the foam and lack of controls had contaminated the area, the complaint said. “Little or no steps were taken to minimize the potential for significant runoff of AFFF residues onto the ground and into surrounding soils and nearby surface waters,” the city said.

The base's samples of finished drinking water, supplied to its residents and employees, showed the presence of the chemicals at concentrations at least three times as high as the EPA's 70 parts per trillion health advisory level.

The Ohio Environmental Protection Agency ordered the base to clean up the chemicals in 2016 to ensure they didn't affect the city's wells.

“The Base has never proposed, developed, designed, or implemented any removal action to stop PFAS detected in groundwater at the Base from migrating,” and affecting the city’s water supply, the complaint said.

The amount of PFAS found in the city's drinking water is below the EPA's health advisory level, but above the standards many states have set in the past few years.

The city relies on groundwater for its source of drinking water, and there are no other sources if the aquifer becomes contaminated, the complaint said.

Cause of Action: Public nuisance; continuing trespass.

Relief: Award monetary damages for continuing trespass and public nuisance; order the base to reimburse the city for past, present, and future costs of addressing the chemicals and installation of an alternative well pumping plan; order the base to pay for or reimburse the city up to \$310 million for a PFAS removal system at

the city's water treatment plant; attorneys' fees.

Response: The Department of Justice didn't immediately respond to a request for comment.

Attorneys: Frost Brown Todd LLC represents the city.

The case is City of Dayton, Ohio v. United States, S.D. Ohio, No. 3:21-cv-135, complaint filed 5/3/21.

Far-reaching Vermont bill takes another step toward becoming law

Kelly Franklin, Chemical Watch

<https://chemicalwatch.com/259725/far-reaching-vermont-bill-takes-another-step-toward-becoming-law>

Vermont has come one step closer to approving a set of far-reaching chemical restrictions for a variety of consumer products, including first-in-the-nation prohibitions on PFASs in carpets and ski waxes and a potential ban on bisphenols in food packaging.

With the state House's unanimous vote in favour of the sweeping legislation (S 20) on 5 May, the legislature now only needs to iron out differences with a similar version of the bill passed by the Senate before it can go to the governor's desk.

"Much of this bill builds on important work done by other states," said Lauren Hierl, executive director of Vermont Conservation Voters, one of the bill's backers. For example, it would follow other states in restricting the use of per- and polyfluoroalkyl substances (PFASs) in class B firefighting foam and require disclosure for their use in firefighters' personal protective equipment (PPE).

It also would follow in the footsteps of states like New York, Maine and Washington in tackling PFASs or ortho-phthalates in food packaging.

But the Vermont measure goes further on concerning substances than any other US state in several ways.

The food packaging restrictions would extend beyond PFASs and phthalates, authorising the state's department of health to adopt rules to prohibit intentionally added bisphenols, with possible exemptions "when clear and convincing evidence suggests [specific substances] are not endocrine-active or otherwise toxic".

Vermont also looks to set itself apart from other states on PFASs by banning the substances from residential carpets and rugs, as well as after-market treatment products. No other US locality has done so, although prominent retailers like Home Depot and Lowe's have already pledged to stop selling these products, and the products are slated to be scrutinised under California's Safer Consumer Products (SCP) programme.

Vermont also would become the first to prohibit the substances' use in ski waxes – a niche application that has seen increased attention in recent years.

With respect to children's products, the bill would add three PFASs – PFHxS, PFHpA and PFNA – to the list of substances that manufacturers must report the use of to the state. The version of the bill passed by the Senate

had included the full class of chemicals, but that list was whittled down to three that are already being regulated in state drinking water.

Nevertheless, the reporting mandate expansion would widen the gap between Vermont's right-to-know scheme and similar children's product initiatives in Washington and Oregon. California's legislature, meanwhile, is considering a bill to ban PFASs entirely from juvenile products.

'Misguided approach'

Supporters of the bill – which include environmental and consumer advocacy groups, firefighters, and a state coalition of businesses that advocate for social responsibility – say the measures are needed to address "major sources" of PFASs.

"The only way to protect public health from these 'forever chemicals' is to cut down on exposure as much as possible," said Marcie Gallagher, environmental associate at the Vermont Public Interest Research Group.

But the American Chemistry Council opposes the measure in its current form, saying the legislation "takes a misguided approach to consumer protection".

Taking a class-based approach to regulating chemicals is "unscientific", said the group, as individual chemistries each have their own structures, uses and environmental and health profiles. High molecular weight phthalates that would be banned in food packaging, for example, "are among the most thoroughly studied families of compounds in use," the ACC said, and government agencies in Europe and Canada have found that substances like DINP and DIDP are "safe as currently used."

Furthermore, the US Food and Drug Administration already reviews food contact substances, said the ACC; "this Vermont legislation is unnecessary and undermines public trust in the federal...

Air Force Fights Growing Calls To Comply With State PFAS Cleanup Limits

Suzanne Yohannan, Inside EPA

<https://insideepa.com/daily-news/air-force-fights-growing-calls-comply-state-pfas-cleanup-limits>

Despite a push from members of Congress and Michigan's governor for the military to meet state cleanup requirements for sites contaminated with per- and polyfluoroalkyl substances (PFAS), Air Force officials are maintaining that they have discretion in determining whether to comply with the state standards.

Air Force Deputy Assistant Secretary for Installations, Environment and Energy Mark Correll said last month that the service would consider Michigan's strict PFAS standards when cleaning up the former Wurtsmith Air Force Base and other sites in the state, but he did not concede the military is compelled to comply with them.

Speaking to reporters about the cleanup at Wurtsmith, Correll said April 9 that while Michigan Gov. Gretchen Whitmer (D) has asked the Defense Department (DOD) to comply with the state's standards, "her request has much broader implications to the entire program." The military services face potentially significant liability for PFAS contamination due to their widespread use of aqueous film forming foam for fighting fuel-based fires; DOD is working to phase-out PFAS in the foam.

Correll said that if Michigan “properly promulgates its more stringent standard, then it will be considered as an [applicable or relevant and appropriate requirement (ARAR)] when we get to the final remedy stage.”

At Superfund cleanups, regulators determine whether federal or more stringent state standards, dubbed ARARs, apply to a remedial action. And at federal facility sites, the federal agency that oversees the property also oversees the cleanup.

The cleanup at Wurtsmith has been particularly contentious between advocates for the surrounding community, who say the Air Force has been slow to respond to urgent cleanup needs, and the Air Force, which contends it has prioritized protecting human health and the environment.

And Whitmer in a March 31 letter to Defense Secretary Lloyd Austin elevated the dispute, invoking a provision in the 2020 defense authorization law to amend an existing Michigan-DOD agreement in a bid to force the military to meet Michigan’s strict PFAS standards, a move that has implications beyond the state.

Whitmer notes that the state now regulates seven PFAS, and says, “By invoking the provisions of Sec. 322, I am seeking a commitment from the Department of Defense to meet or exceed Michigan’s standards at all sites of PFAS contamination that originated from [DOD] activities.”

A DOD spokesman said he would be unable to respond by press time to an inquiry into whether DOD has replied to Whitmer.

‘Cultural Change’

Meanwhile, Sen. Gary Peters (D-MI) and Rep. Dan Kildee (D-MI) recently weighed in on the issue, in seeking to ensure the Biden administration’s new leadership understands the urgency of the issue at Wurtsmith. During an April 21 press conference on Wurtsmith, joining environmental groups pushing for cleanup at the site, Peters called for making sure the new leadership at the Air Force understands the urgency of this issue, and that the military has to be more aggressive.

Kildee said he believes there is a cultural problem within the Air Force, and broadly within DOD on PFAS cleanup. “And what I have been pushing forward is for the new senior leadership to try to initiate a cultural change, a paradigm shift, in terms of what the federal government, DOD, and in this case specifically the Air Force, sees as its responsibility to communities” that host bases.

He added that during the transition from the Trump to Biden administrations, he met with the incoming administration on this issue. He said he is “confident that senior leadership, maybe outside of DOD but within the administration, gets it” and is willing to undertake more aggressive actions on it. “But that hasn’t translated yet to the staff that are making the daily decisions,” he said. “So that’s one of the reasons we’re going to continue to press from the senior administrative end for that culture change.”

During the April 9...

HFC Phase-Out Proposal Expands Battle Over TSCA CCl4 Evaluation

David LaRoss, Inside TSCA

EPA's new plan to phase out hydrofluorocarbon (HFC) refrigerants due to their adverse climate effects appears to open a new venue for the fight over its TSCA evaluation of carbon tetrachloride (CCl₄), as critics say the Trump-era finding that use of the solvent poses unreasonable risks to workers could block production of climate-friendly alternatives.

An industry source says that while the May 3 Clean Air Act proposal phasing out HFCs does not specifically seek comment on worker exposures, its call for input on environmental justice issues stemming from production of alternatives sweeps in the same question of exposure to airborne CCl₄ that was at the heart of debate over the Toxic Substances Control Act (TSCA) evaluation.

"They haven't specifically expanded it to worker exposures; they've taken a concern expressed in the risk evaluation, and taken it as an environmental justice issue," the source says.

EPA's plan aligns with key requirements in a December 2020 law that extended to the agency's longstanding air act authority to regulate ozone depleting substances to HFCs, which are potent, short-term greenhouse gases.

The law requires EPA to finalize the rule in September, and is designed to allow the United States to meet its obligations under a 2016 treaty to phase down HFCs globally, known as the Kigali Amendment.

Under the program, EPA would issue manufacturers a declining number of allowances that permit them to produce or in some cases import HFCs. It would set targets for national production of the class of chemicals, as well as separate targets for "consumption," which also accounts for imports, exports and destruction.

But as part of the rulemaking process, EPA is seeking comment on whether "chemical feedstocks and byproducts emitted as part of the production process at a facility expending allowances, or producing substitutes, may cause or contribute to disproportionately high exposure to certain air toxics in communities adjacent to, or surrounding, that facility."

The industry source says the proposal's implication that facilities making the new refrigerants will release chemicals used as feedstock to the surrounding community rests on similar underlying assumptions to the TSCA evaluation, including that there is a significant chance the "closed-loop" system used in manufacturing will fail and release CCl₄ and other substances into ambient air, whether indoors or outdoors.

"This is a completely different office picking up those findings," the source says, adding that the process will thus give stakeholders a chance to raise their concerns to new officials at EPA and potentially win a different result -- potentially a major boon to those groups, since the structure of EPA's TSCA evaluations has thus far prevented direct challenges to its determinations that particular chemical uses pose unreasonable risks requiring regulation.

The Nov. 3 CCl₄ evaluation found unreasonable risks from using the solvent to manufacture refrigerant gases, along with another 12 of the 15 total uses the agency evaluated, triggering TSCA's two-year timeline to enact risk management rules to address them.

But industry groups have argued that any rules limiting use of CCl₄ in refrigerant production sharply constrain companies' capacity to manufacture hydrofluoroolefins (HFOs) -- seen as the most likely alternatives to HFCs.

HFC Replacements

While the May 3 proposal does not specifically require use of HFOs, it names them as a likely HFC replacement, and some sectors have already adopted them as a preferred substitute, which could feed into arguments critics of the evaluation previously raised, that strict limits on CCl4 will frustrate any move away from HFCs.

W. Caffey Norman, counsel to the Halogenated Solvents Industry Alliance, Inc. (HSIA) and a partner at Squire Patton Boggs, recently told Inside TSCA that a rule based on the TSCA evaluation “could shut down a lot of [HFO] manufacturing unless EPA is able to adopt...

Industry, Union Clash Over CSB Nominees, Signaling Confirmation Battle

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsca-news/industry-union-clash-over-csb-nominees-signaling-confirmation-battle>

Chemical firms are opposing President Joe Biden’s newly announced Chemical Safety and Hazard Investigation Board (CSB) nominees while a key union is backing their confirmation, in a sign that the recent bipartisan calls to bolster the depleted board might not be enough to avert a battle over approving the picks.

The American Chemistry Council (ACC) said in an April 30 press release that it is “disappointed that the current slate of nominees lack sufficient experience and familiarity with industrial process safety practices or chemical manufacturing operations.”

“Process safety experience is critical to an effective Chemical Safety Board,” ACC continues.

But the United Steelworkers (USW), a major labor union that recently signed a joint letter with the American Fuel & Petrochemical Manufacturers (AFPM) urging Biden to nominate new CSB members, is supporting the three nominees as “extremely capable,” indicating a partisan split over confirming them as the process moves to the Senate.

“We feel these three candidates are extremely capable and hope the Senate will confirm them quickly. We also look forward to a nominee to fill the fourth vacant board seat so that the CSB can again operate at full capacity,” USW says in a statement to Inside TSCA.

Biden announced May 28 that he intends to nominate Sylvia Johnson, Steve Owens and Jennifer Sass to five-year terms on the five-seat CSB, which currently has just one Senate-confirmed member -- Chair Katherine Lemos.

The three nominees come from varied professional backgrounds. Owens is an environmental attorney who headed EPA’s office of Chemical Safety & Pollution Prevention (OCSPP) in 2009-11; Johnson is a former epidemiologist at the United Auto Workers who has recently worked as a lobbyist for that union and the National Education Association; and Sass is a senior scientist with the Natural Resources Defense Council (NRDC).

While each has a background in chemicals or labor safety, ACC says their expertise is not directly relevant to the process-safety issues at the heart of CSB’s mandate.

“The CSB has the important job of conducting complex investigations of major accidents and making recommendations, which is why it must be managed by qualified board members. We urge the Administration to work with industry and other stakeholders on advancing nominees with the requisite skills and experience to successfully carry out the CSB’s valuable work,” ACC’s statement says.

The board is an independent federal agency tasked with investigating industrial chemical accidents at sites across the country and making recommendations to policymakers and facilities on how to prevent future incidents. It was created by the Clean Air Act Amendments of 1990 and is overseen by EPA’s Office of Inspector General (OIG).

Lemos, who was former President Donald Trump’s only CSB nominee during his term, previously worked for the Federal Aviation Administration and the National Transportation Safety Board, and in the private sector as a director of defense contractor Northrop Grumman’s aerospace sector.

Depleted Board

Biden announced the three nominations following widespread arguments -- from stakeholders across the political spectrum as well as the EPA OIG -- that CSB cannot continue to function as a “quorum of one,” although Lemos and her staff have argued that it remains able to carry out its duties.

Most prominently, the OIG wrote in a 2020 report that “Having only one member impairs the function of the CSB,” and recommended that the president quickly name a slate of nominees to the vacant seats.

And on April 13, USW and AFPM released a joint letter urging Biden to nominate new CSB members, writing that “CSB, to continue its progress towards the restoration of its mission, needs a fully populated board of qualified individuals with industry as well as labor experience.”

AFPM did not respond to a request for comment on its position on confirming Owens, Johnson and Sass.

Regan Targets Childhood Lead Exposures, Readies Equity Task Force

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsca-news/regan-targets-childhood-lead-exposures-readies-equity-task-force>

EPA Administrator Michael Regan raised disparities in lead exposures and asthma rates as top priorities in his first briefing with children’s health officials, including as potential subjects of a planned agency-wide task force on racial equity, Office of Children’s Health Protection (OCHP) Director Jeanne Briskin says.

During a May 3 meeting of EPA’s Children’s Health Protection Advisory Committee (CHPAC), Briskin said she and OCHP colleagues briefed Regan last week and found him “very supportive of children’s environmental health issues. He has a particular interest in lead and asthma disparities.”

And she said Regan’s focus on those subjects extends to a “new agency equity team” he is standing up to examine environmental health hazards facing minority groups, under President Joe Biden’s recent directives for

agencies to step up their focus on environmental justice and racism.

“EPA has convened a leadership team to identify and address systemic barriers that prevent underserved communities and their members from benefitting from the agency’s programs. The team is looking at the whole scope of EPA’s work including rulemaking, grantmaking, research, stakeholder engagement and enforcement. EPA is going to work with outside stakeholders, including CHPAC, and we plan to collaborate across federal agencies with the help of” the White House Office of Management and Budget, Briskin said.

Regan is slated to address CHPAC at its next session on May 10 and could go into more detail that and other elements of his agenda in that presentation.

EPA regulates lead exposures and cleanups under several provisions of the Toxic Substances Control Act (TSCA), including the Lead-Based Paint Renovation, Repair and Painting Rule and regulatory lead-dust standards that environmentalists, Democrats and CHPAC itself have urged officials to tighten from Trump-era levels.

Meanwhile, asthma has been tied to exposures to a host of toxic chemicals -- including formaldehyde in a recent study -- as well as more conventional air pollutants. In particular, New York is targeting asthma through a novel chemicals program that aims to limit use of a host of “chemicals of concern” linked to what state officials have said is an “epidemic of asthma” as well as other concerns.

“In terms of asthma disparities, we heard from the Administrator yesterday that he’s interested in furthering our work and across the government to address asthma. We are planning to work with our counterparts to figure out how best to proceed,” Briskin said.

She went on to praise Regan’s focus on children’s environmental health more generally, noting that she has been asked to join the equity team and that three of the panel’s four subgroups are relevant to children’s environmental health. “We got a very positive response. We’re looking forward to implementing a variety of activities over the course of the year on children’s environmental health,” she said.

Agency-Wide Work

Briskin added that OCHP is also set to work with EPA’s Office of Environmental Justice on several topics related to identifying environmental hazards to vulnerable populations such as the American’s Children and the Environment (ACE) report, EJSCREEN and EnviroAtlas tools -- which stakeholders and Regan himself have raised as key steps in fulfilling TSCA’s mandate to protect “susceptible subpopulations” from unreasonable risks posed by toxic chemicals.

“We are invested in not only updating [ACE] indicators but looking into adding indicators which track race, ethnicity and income so we can have a better handle on trends that are response to the social determinants of health and environmental justice. We are also looking to into establishing some indicators on climate change based on data that may be available to work on these areas,” Briskin said.

She added that the agency’s chemicals office is also working on a substantive response to CHPAC’s Jan. 26 letter outlining recommendations on how to prioritize...

There are harmful chemicals in North Carolina’s waterways. Will lawmakers address the problem?

<https://www.northcarolinahealthnews.org/2021/05/05/there-are-harmful-chemicals-in-north-carolinas-waterways-will-lawmakers-address-the-problem/>

There are 10 state legislature bills concerning so-called “forever chemicals” that have contaminated NC waterways. But who is supporting them has become a partisan issue.

The public utility for Wilmington and New Hanover County will spend about \$46 million to filter out potentially carcinogenic “forever chemicals” from drinking water for an estimated 200,000 people.

In neighboring Brunswick County, bids totaling \$137 million have been approved for a similar filtration system to remove per- and polyfluoroalkyl substances known as PFAS to be completed within the next two years.

In Cumberland County, officials have approved spending \$10 million to run public water lines to two schools and homes whose wells have been contaminated with the substances, much of which is the result of contamination emanating from the smokestacks at the Chemours Fayetteville Works plant on the border of Bladen County.

And in the small Chatham County town of Pittsboro, officials are eyeing a \$42 million filtration system for the removal of PFAS and perhaps an even more troubling chemical, a likely carcinogen known as 1,4 dioxane. The money would also expand the town’s water treatment plant.

If these projects move forward, ratepayers — and not the companies that contaminated the water supplies — will be footing the bills. Brunswick County recently announced in January that it is raising rates to offset filtration costs and expansion of its water treatment plant. Lawsuits have been filed in New Hanover and Brunswick counties in an effort to recoup the money.

Some of the state’s lawmakers want to make the polluters pay.

Ten bills introduced

A bill introduced in the General Assembly by Rep. Deb Butler (D-Wilmington) would put the onus of cleanup on the backs of the industries that caused the contamination in the first place.

House Bill 444 is among 10 that have been filed since March 22 that aim to reduce or eliminate PFAS in North Carolina — and, in the case of Butler’s bill — hold the polluters responsible. One of the bills, introduced by Rep. Pricey Harrison (D-Greensboro), would go so far as to ban the manufacture, sale and distribution of PFAS in the state.

Most of the bills were filed with overwhelming support from Democrats – but including a handful of Republican co-sponsors – have been introduced in previous legislative sessions, and all of them, Butler and Harrison agree, have zero chance of being approved this time around.

They blame politics.

“Let’s just face it,” Butler said. “DuPont, Chemours and all these other big industrial manufacturers pay a lot of money to politicians ... They pay the max to an awful lot of very influential Republicans. And I don’t understand it because, honestly, clean water should not be a partisan issue. It really, really should not. But everything is these days. It is tragic, really.”

Harrison agreed that partisan politics is a big part of the problem, but she said it goes even deeper than that.

“First of all, in terms of doing something more aggressive, I think it’s a couple of things,” Harrison said. “One, it’s probably the problem is so huge and unwieldy that where do we even get started? Isn’t this something that maybe EPA should be tackling, you know, do we actually have the manpower and the wherewithal to manage that in our state? How’s it going to affect commerce? We just don’t have a history of being very aggressive with exposure to toxic chemicals.”

Republican PFAS funding

Butler and Harrison didn’t mention a bill introduced in April by Sen. Mike Lee (R-Wilmington) and other Republicans that would allocate \$15 million to the North Carolina Policy Collaboratory, which is housed at the University of North Carolina – Chapel Hill.

A branch of the collaboratory — the PFAS Testing Network — has been using more than \$5 million in state funding to test all of the municipal water systems in North Carolina for PFAS contamination. In July, it released...

2 Tri-Cities businesses to pay penalties to settle EPA lead paint claims

N/A, Tri-City Herald

<https://www.tri-cityherald.com/news/local/article251161544.html>

Two Kennewick companies are in trouble with the Environmental Protection Agency, which accuses them of renovating older homes without certification for lead-based paint.

Tri-City Glass and All-Safe Abatement Services have agreed to pay \$1,000 each in settlement agreements with the EPA and to meet EPA certification requirements before doing any more renovations on older homes.

Six other Washington state home renovation companies also reached settlement agreements.

Lead-contaminated dust from chipped or peeling lead-based paint in homes built prior to 1978 is one of the most common causes of elevated blood lead levels in children, according to the EPA.

Renovators of pre-1978 housing are required by federal law to obtain EPA certification.

They must also inform tenants and residents of possible lead-based paint or known lead hazards and use practices intended to reduce lead-based paint exposure.

Lead-based paint on walls and surfaces that are in good condition is not a health hazard because it cannot be ingested or inhaled.

But removing it or disturbing it can create lead dust and paint chips that are a health hazard.

Tri-Cities area residents who hire contractors to renovate pre-1978 homes should check to see if they are

certified. If homeowners do the work themselves, EPA has tips posted at [bit.ly/LeadPaintSafety](https://www.epa.gov/lead-paint-safety) on how to do it safely.

Court of Appeals Gives EPA 60 Days to Fix Chlorpyrifos Regulation

Dan Nosowitz, Modern Farmer

<https://modernfarmer.com/2021/05/court-of-appeals-gives-epa-60-days-to-fix-chlorpyrifos-regulation/>

The pesticide chlorpyrifos has had a turbulent past few years.

The pesticide, marketed under brand names including Dursban and (until recently) Lorsban, is an insecticide designed to target biting insects such as aphids. It has also been repeatedly linked to neurological damage in children and has been the subject of repeated fines and scandals. Now, the Ninth Circuit Court of Appeals in San Francisco has given the EPA 60 days to either fix its regulation or the pesticide will be banned entirely.

In 2007, Pesticide Action Network North America (PANNA) and the NRDC filed a petition to ban chlorpyrifos, citing those child neurological problems caused by the pesticide. Many years later, the EPA's own research found that chlorpyrifos is unsafe when used in its typical fashion, leading to a revocation of the pesticide in 2015, under then-President Barack Obama. Within two years, though, under President Donald Trump, the EPA's chief, Scott Pruitt, chose to ignore those findings, saying the data was "unreliable." This decision came shortly after Pruitt took a meeting with Dow Chemical, which patented chlorpyrifos.

In this newest ruling, the Court of Appeals called the EPA's denial of that 2007 petition "arbitrary and capricious," and it lambasted the agency for continuing to allow the use of the pesticide "without making the safety findings required by the FFDCA (Federal Food, Drug and Cosmetic Act)," according to DTN Progressive Farmer.

The EPA now has 60 days to either modify its regulation to allow for the safe application of chlorpyrifos or ban the pesticide altogether. This window is short, and it will likely simply result in chlorpyrifos being banned, but, as the court says, there have been many years for the EPA to write these regulations.

Use of chlorpyrifos has dipped significantly in recent years, and Corteva Agriscience, the main registrant and producer of it, already announced that it would stop selling the pesticide. It's also already been banned by some significant agricultural states, including California.

County officials urge EPA to quickly clean up DDT dumping off Palos Verdes Peninsula

David Rosenfeld, Palos Verde Peninsula News

The Los Angeles County Board of Supervisors will urge the U.S. Congress and the EPA to swiftly assess the environmental consequences and expedite cleanup of thousands of barrels of potentially toxic chemicals sitting on the ocean floor off the Palos Verdes Peninsula.

The supervisors unanimously voted to lobby the federal government on Tuesday, May 4, about a week after scientists announced they had discovered more than 27,000 barrels of what could be the banned pesticide DDT laying on the ocean floor between the Palos Verdes Peninsula and Catalina Island. It's a revelation that has potentially catastrophic consequences for marine life.

"We are relying on the EPA," said District 4 Supervisor Janice Hahn, who introduced Tuesday's motion, "to hold accountable those who dumped barrels of toxic waste overboard into the Catalina Channel."

Tuesday's vote means the Board of Supervisors will send a letter to Michael Regan, the administrator of the Environmental Protection Agency, urging the federal government to analyze the extent of DDT damage off the coast and clean it up quickly. The county will also formally support a resolution from the state Assembly, which passed late last month and is currently awaiting a vote in the state Senate, that would also put pressure on the EPA.

"I think we need to support every effort possible," Hahn said, "to restore our ocean life, our kelp forest and sea birds."

DDT contamination off the Los Angeles coast, caused by the now-defunct Montrose Chemical Corp., has long been known to be a problem. Montrose reached a \$140 million settlement with federal agencies in 2001, which included having the company pay for the Palos Verdes Reef Restoration Project that was completed last year.

But on April 26, scientists from UC San Diego's Scripps Institution of Oceanography released a survey that detailed what potentially could be more than 27,000 barrels of dangerous chemicals. The barrels were discovered across 36,000 acres of seafloor, at depths of up to 3,000 feet. The barrels were about 12 miles offshore from the Palos Verdes Peninsula and eight miles offshore from Catalina Island.

But so far, officials do not know who is responsible for the recently discovered barrels — likely dumped decades ago — or what's in them, though it could be DDT, a synthetic insecticide developed in the 1940s and banned in 1972 for its detrimental impacts on humans and wildlife.

Chris Lowe, who directs the Shark Lab at Cal State Long Beach, said at the Board of Supervisors meeting Tuesday the barrels likely pose greater risk to sea creatures.

"The concern with the deep site is that now we have barrels creating habitat," Lowe told the supervisors, "which might actually attract animals. Many are capable of diving to those depths and can spread those chemicals. This site needs to be studied and assessed before a cleanup can begin."

Supervisor Hilda Solis said it was important to bring those responsible for the barrels to justice, saying the dumping was egregious.

"We can't continue to enable the bad actors from putting our communities at continued risk," she said. "We have to strive for environmental justice such as the elimination of toxics and chemical from the ocean."

What to expect from new EPA leader

Diane Sofranec, Pest Management Professional

<https://www.mypmp.net/2021/05/05/what-to-expect-from-new-epa-leader/>

Fifty years ago, the U.S. Environmental Protection Agency (EPA) was established to develop and enforce regulations that protect human health and the environment. Because all pesticides used in the U.S. must be registered with the EPA, the agency plays a key role in the pest management industry.

Although the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) governs the registration, distribution, sale and use of pesticides in the United States, it is the EPA that establishes the requirements for pesticide labeling, packaging, worker protection, registration, experimental use permits, restricted-use classification, federal or state agency use exemptions, storage, disposal, transportation and recalls.

With each new presidential administration comes a new EPA leader who may propose and adopt changes that could affect the pest control industry. The EPA administrator is selected by the U.S. president, and the appointment is confirmed by the Senate. This year, President Biden nominated Michael Regan, who served as secretary of North Carolina's Department of Environmental Quality since 2017, but began his career at the EPA. Regan's appointment as head of the agency was confirmed on March 10 by a Senate vote of 66 to 34.

WORKING TOGETHER

The National Pest Management Association (NPMA) has a long history of working with EPA administrators. The NPMA says it supports Regan's appointment, and sent him a letter of congratulations that highlighted the pest control industry's interest in the important role the agency plays in pesticide regulation.

"Our organization prides itself on the excellent working relationship we have fostered with the EPA's Office of Pesticide Programs [OPP] across multiple administrations," says Dr. Jim Fredericks, the NPMA's VP of technical and regulatory affairs and Pest Management Professional's "Callback Cures" columnist. "This relationship is grounded in the belief that a well-informed EPA, provided with up-to-date data and information, is good for both the structural pest control industry and consumers."

What does Regan's appointment mean for the pest control industry? The policies the EPA enact often align with the administration's agenda, and it's no secret that President Biden is focusing on climate change and clean air.

"Climate change is a top priority for the entire Biden administration, including the EPA. All federal agencies have been tasked with reviewing their efforts to determine how their programs might impact climate change," Dr. Fredericks tells PMP. "As a result, we can expect that much of the federal environmental and economic policies for the next four years will include climate-related issues."

Research shows climate change has an impact on pest control. Dr. Fredericks notes that the Fourth National Climate Assessment, a 1,500-page report published in 2018 by the U.S. Government's Global Change Research Program, projects climate change will "alter the geographic range and distribution of disease-carrying insects and pests, exposing more people to ticks that carry Lyme disease and mosquitoes that transmit viruses such as Zika, West Nile, and dengue, with varying impacts across regions." He says the NPMA will continue to engage with the EPA on this and other topics that may affect the pest control industry.

NO SURPRISES

In addition, Dr. Fredericks says, the NPMA expects the EPA to enact policies that will affect the structural pest control industry, but the association does not anticipate any surprises.

This year, for instance, the OPP is expected to publish a proposed interim decision for sulfuryl fluoride and a completed interim decision for phosphine and metal phosphides, after a years-long registration review process for structural fumigants.

The EPA also is expected to release its findings of the sulfuryl fluoride clearance device testing that scientists in the OPP's Benefits and Economic Analysis Division completed in response to an EPA report on structural fumigation...

U.S. Residents Urged Not to Spray Pesticides for Periodical Cicadas

N/A, Beyond Pesticides Blog

<https://beyondpesticides.org/dailynewsblog/2021/05/u-s-residents-urged-not-to-spray-pesticides-for-periodical-cicadas/>

As periodical cicadas begin to emerge throughout the central and eastern United States, many may be tempted to put a halt to their noisy mating calls by reaching for a spray bottle of pesticide. But besides violating local noise ordinances, cicadas are relatively harmless and play a critical ecological role. Environmental organizations are urging U.S. residents and communities not to spray cicadas with pesticides, noting that pesticide hazards will last longer than Brood X cicadas.

Reports indicate that pesticide applicator groups and businesses agree that there is no need to spray for periodical cicadas. "We really want people to understand and know that pesticides are not the answer, which sounds really funny coming from a pest control company," Frank Meek, a manager at Orkin, told CNET. "Pesticides are not the thing to use on this insect. They don't work for it, and it's a waste of product, and it's a danger to the environment just to spray down because you're afraid of the cicadas."

But while environmental groups and frontline applicators are working to educate the public over the futility of spraying, pesticide manufacturers like Ortho are encouraging homeowners to spend their money on highly toxic and unnecessary pesticides. "Ortho Bug B Gone advertises killing cicadas using the active ingredient bifenthrin, known to cause an array of serious health and environmental impacts," said Bonnie Raindrop, coordinator for the Maryland Smart on Pesticides Coalition. "With over 99% inert ingredients, it can include other pesticides and chemicals that have greater environment and health risks than the main active ingredient, including the forever chemical PFAS, which was recently found in mosquito control products used in Maryland and Massachusetts. [The U.S. Environmental Protection Agency] EPA said any level of PFAS is of toxicological significance."

While bifenthrin and its class of synthetic pyrethroids pose significant dangers to the environment and human health, and have been linked to developmental problems in young children, there is growing evidence that inert ingredients are causing just as much harm, or more harm than the active ingredients in pesticide products. These toxic pesticide products can remain in the environment for months – longer than Brood X stays above ground

this year.

Periodical cicadas grow up to roughly one inch in size, and have red eyes, a black thorax, and wings with orange veins. Periodical cicadas may have either a 13 or 17 year life cycle. The current Brood X, nicknamed “The Great Eastern Brood,” is the largest 17 year cicada brood, and last emerged in 2004. Cicadas spend most of their lives underground feeding on sap from tree roots. Prior to emergence, nymph cicadas will construct tunnels to prepare to emerge once temperatures have hit 64 degrees Fahrenheit. After emerging, nymphs find a location to molt one last time, shedding their exoskeleton and turning their attention to finding a mate. The loud noises produced by cicadas are solely from males, whose mating calls can reach 100 decibels. Cicadas live short lives, and most will die off by mid-July. After mating, females will seek out young trees to lay their eggs. These eggs will then hatch, and the nymphs will again bury underground to begin the cycle anew.

From the description of the cicada life cycle we can find a multitude of reasons why they should not be blanket sprayed with toxic pesticides:

Cicadas emerge in very large numbers, and provide an abundant food source for local wildlife (and even humans!). Spraying for cicadas could put your own health at risk, and is likely to harm nontarget species as well as those that feed on contaminated cicadas.

Cicadas dig small tunnels that help aerate soil and cycle nutrients.

Although pesticide manufacturers are fearmongering over cicada damage to trees, they provide an important ecological role by pruning weak branches.

When cicadas die, they release vital nutrients back into the...

Federal Court Orders the Removal of This Brain-Damaging Pesticide From Foods

Cheyenne Buckingham, Eat This, Not That

<https://www.eatthis.com/news-federal-court-orders-removal-of-brain-damaging-pesticide/>

A federal court recently ordered the Environmental Protection Agency (EPA) to take action toward banning the neurotoxic pesticide chlorpyrifos.

The pesticide was first scheduled to be banned in 2016 by the Obama administration, however, the Trump EPA "changed course the next year without providing any scientific justification for its decision," the Intercept reports.

How To Make Candy & Oreo Filled Brains

According to the Environmental Working Group (EWG), the pesticide is currently licensed for use on nearly 50 food crops, which include fruits, vegetables, nuts, and even milk. (Related: Costco Foods You Should Always Avoid, According to Nutritionists)

Why is chlorpyrifos such a big concern?

In February, the EWG called on the EPA to ban the use of the brain-damaging pesticide in a public comment letter, as studies have shown exposure to chlorpyrifos during pregnancy can result in reduced IQ, delayed development of motor and sensory functions, as well as social and behavioral dysfunction.

An EPA risk assessment conducted in 2016 concluded that dietary exposures to chlorpyrifos for children between the ages of 1-2 years old could be greater than 140 times the suggested safe levels.

"The numbers are alarming, especially because even tiny amounts of this pesticide can cause irreparable neurological damage to children," Alexis Temkin, Ph.D., an EWG toxicologist said in a statement.

This isn't the first time the EPA has come close to banning the pesticide, though. Concerns about chlorpyrifos harming children emerged as early as the late 1980s with environmental groups urging to get the pesticide banned. The Dow Chemical Company (now known as Corteva) and agricultural groups fought against the agency, claiming that banning the chemical would cause a shortage of fruits and vegetables.

At the time, the EPA didn't have the political support from the White House or Congress that it needed to get rid of the pesticide sooner. This year, Biden issued an executive order calling for a reexamination of the Trump administration's reversal of the chlorpyrifos ban. Corteva stopped using the pesticide last year but the EPA continues to allow other companies to make the pesticide.

Eat This, Not That! reached out to the EPA for an inquiry but has yet to hear back.

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